

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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Refer Reply To:

CC:CORP:6

PLR-130195-10

Date:

January 14, 2011

Legend

Distributing =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Controlled 4 =

Controlled 5 =

Controlled 6 =

Group A Shareholders =

Group B Shareholders =

Group C Shareholders =

Group D Shareholders =

Group E Shareholders =

Group F Shareholders =

State X =

Date 1 =

Business A =

Dear :

This letter responds to your July 2, 2010 request for rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distributions (defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, or Controlled 6, or any combination thereof (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or any Controlled (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is a closely-held State X corporation that was incorporated on Date 1. Distributing has one class of stock outstanding, voting common stock. Distributing's stock is owned in varying percentages by six family shareholder groups, consisting of the Group A Shareholders, the Group B Shareholders, the Group C Shareholders, the Group D Shareholders, the Group E Shareholders, and the Group F Shareholders.

Distributing is engaged in Business A. The financial information submitted by Distributing indicates that Business A has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The six family shareholder groups have had significant disagreements concerning the management and operation of Distributing, and believe it is necessary to separate Business A among the six family shareholder groups. Accordingly, Distributing has structured the Proposed Transaction, described below.

Proposed Transaction

For what is represented to be a valid business purpose, Distributing has proposed the following transaction (the "Proposed Transaction"):

- (i) Distributing will form Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, and Controlled 6 as State X corporations. Each Controlled will have one class of stock outstanding, voting common stock.
- (ii) Distributing will transfer various assets related to the conduct of Business A to each Controlled in exchange for all of the stock of each Controlled (the "Contributions"). No Controlled will assume liabilities or receive assets subject to liabilities.
- (iii) Immediately after the Contributions, Distributing will distribute: (1) all of the Controlled 1 stock to the Group A Shareholders in exchange for all of their Distributing stock; (2) all of the Controlled 2 stock to the Group B Shareholders in exchange for all of their Distributing stock; (3) all of the Controlled 3 stock to the Group C Shareholders in exchange for all of their Distributing stock; (4) all of the Controlled 4 stock to the Group D Shareholders in exchange for all of their Distributing stock; (5) all of the Controlled 5 stock to the Group E Shareholders in exchange for all of their Distributing stock; and (6) all of the Controlled 6 stock to the Group F Shareholders in exchange for all of their Distributing stock (the "Distributions"). Thereafter, the Group A Shareholders will own all of the Controlled 1 stock, the Group B Shareholders will own all of the Controlled 2 stock, the Group C Shareholders will own all of the Controlled 3 stock, the Group D Shareholders will own all of the Controlled 4 stock, the Group E Shareholders will own

all of the Controlled 5 stock, and the Group F Shareholders will own all of the Controlled 6 stock.

(iv) Immediately after the Distributions, Distributing will liquidate.

Representations

The following representations are made with regard to the Proposed Transaction:

(a) The fair market value of the Controlled stock and other consideration to be received by each shareholder of Distributing will be approximately equal to the fair market value of the Distributing stock surrendered by the shareholder in the exchange.

(b) No part of the consideration to be distributed by Distributing in the Distributions will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(c) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operation, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) The five years of financial information submitted on behalf of the business to be transferred to each Controlled is representative of the business's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(e) Neither Business A nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distributions in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distributions, Distributing will have been the principal owner of the goodwill and significant assets of Business A. Following the Distributions, each Controlled will be the principal owner of its share of the goodwill and significant assets of Business A.

(f) Following the Distributions, each Controlled will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by Distributing prior to consummation of the Distributions.

(g) The Distributions are being carried out for the following corporate business purpose: to resolve shareholder conflict with regard to the management and conduct of the business of Distributing, which has impeded the business of Distributing. The Distributions are motivated, in whole or substantial part, by this corporate business purpose.

(h) The Distributions are not being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, or Controlled 6, or any combination thereof.

(i) For purposes of § 355(d), immediately after the Distributions, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distributions.

(j) For purposes of § 355(d), immediately after the Distributions, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of any Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of any Controlled stock that either: (i) was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distributions; or (ii) is received in the Distributions to the extent attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distributions.

(k) The total fair market value of the assets Distributing will transfer to each Controlled in the Contributions will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by that Controlled in the Contributions; (ii) the amount of any liabilities owed to that Controlled by Distributing that are discharged or extinguished in connection with the Contributions; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from that Controlled in the Contributions. The fair market value of the assets of each Controlled will exceed the amount of its liabilities immediately after the Contributions.

(l) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(m) No intercorporate debt will exist between Distributing and any Controlled, or between any Controlled, at the time of, or subsequent to, the Distributions.

(n) Payments made in connection with all continuing transactions, if any, between any Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (o) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (p) The Distributions are not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or any Controlled (including any predecessor or successor of any such corporation).
- (q) Immediately after the transaction (as defined in § 355(g)(4)), either: (i) neither Distributing nor any Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)); or (ii) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), who did not hold such an interest in such corporation immediately before the transaction (as defined in § 355(g)(4)).
- (r) Distributing and each Controlled, and their respective shareholders, will pay their own expenses, if any, incurred in connection with the Proposed Transaction.
- (s) Immediately following the Proposed Transaction, each Controlled will be eligible to elect to be an S corporation, and each Controlled will elect to be an S corporation pursuant to § 1362(a). There is no plan or intent to revoke or otherwise terminate the S corporation election of any Controlled.

Rulings

Based solely on the information submitted and representations made, we rule as follows with regard to the Proposed Transaction:

- (1) Each Contribution, followed by its respective Distribution, will qualify as a reorganization within the meaning of § 368(a)(1)(D). With respect to each reorganization, Distributing and the respective Controlled will be “a party to a reorganization” within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contributions. § 361(a).
- (3) No gain or loss will be recognized by any Controlled on the Contributions. § 1032(a).
- (4) The basis of each asset received by each Controlled in the Contributions will equal Distributing’s basis in that asset immediately before the Contributions. § 362(b).
- (5) The holding period of each asset received by each Controlled in the Contributions will include the period Distributing held that asset. § 1223(2).

(6) No gain or loss will be recognized by Distributing on the Distributions. § 361(c)(1).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) the Group A Shareholders, the Group B Shareholders, the Group C Shareholders, the Group D Shareholders, the Group E Shareholders, or the Group F Shareholders on their receipt of the Controlled 1 stock, the Controlled 2 stock, the Controlled 3 stock, the Controlled 4 stock, the Controlled 5 stock, and the Controlled 6 stock, respectively, in the Distributions. § 355(a)(1).

(8) The aggregate basis of the Controlled 1 stock received by each of the Group A Shareholders, the Controlled 2 stock received by each of the Group B Shareholders, the Controlled 3 stock received by each of the Group C Shareholders, the Controlled 4 stock received by each of the Group D Shareholders, the Controlled 5 stock received by each of the Group E Shareholders, and the Controlled 6 stock received by each of the Group F Shareholders in the Distributions will, in each instance, equal the shareholder's aggregate basis in the Distributing stock surrendered in exchange therefor. § 358(a)(1).

(9) The holding period of the Controlled 1 stock received by each of the Group A Shareholders, the Controlled 2 stock received by each of the Group B Shareholders, the Controlled 3 stock received by each of the Group C Shareholders, the Controlled 4 stock received by each of the Group D Shareholders, the Controlled 5 stock received by each of the Group E Shareholders, and the Controlled 6 stock received by each of the Group F Shareholders in the Distributions will, in each instance, include the period the shareholder held the Distributing stock on which the Distributions are made, provided the shareholder held that stock as a capital asset on the date of the Distributions. § 1223(1).

(10) As provided in § 312(h), proper allocation of earnings and profits among Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, and Controlled 6 will be made under § 1.312-10(b).

(11) Each Controlled will be subject to § 1374 with respect to all assets transferred to it from Distributing to the same extent Distributing was subject to § 1374 with respect to such assets.

(12) Distributing's momentary ownership of the stock of each Controlled, as part of the reorganizations under § 368(a)(1)(D), will not cause any Controlled to have an ineligible shareholder for any portion of its first taxable year under § 1361(b)(1)(B). If each Controlled otherwise meets the requirements of a small business corporation under § 1361, it will be eligible to elect to be a subchapter S corporation under § 1362(a) for its first taxable year.

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, we express no opinion regarding: (i) whether the Distributions satisfy the business purpose requirement of § 1.355-2(b); (ii) whether the Distributions are being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled 1, Controlled 2, Controlled 3, Controlled 4, Controlled 5, or Controlled 6, or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the Distributions are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or any Controlled (see § 355(e) and § 1.355-7).

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with the power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Alfred C. Bishop, Jr.
Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)